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09/534,973	03/27/2000	Remy Badin	1247-0862-6E	3908

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EXAMINER

CRONIN, STEPHEN K

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3747

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/534,973
Filing Date: March 27, 2000
Appellant(s): BADIN ET AL.

MAILED
MAY 05 2006
GROUP 3700

Gregory J. Maier
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 13, 2006 appealing from the Office action mailed September 9, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,971,164	Paley	8-1934
4,079,859	Jennings	3-1978

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5 and 16-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paley 1,971,164 in view of Jennings 4,079,859.

Paley teaches a glass product comprising a main container body 11a with a closed bottom, a secondary container body 19, and a collar 22a. See in particular figure 3. The size of the main container body, the angle of the main body, secondary body and collar all fall within the range set forth in the claims. Paley discloses the claimed invention except for the angle of the collar to the main container body and the secondary container body being "about 120 degrees". It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the angle of the collar to the main container body and the secondary container body at about 120 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Paley teaches the claimed invention except for the container being formed from one piece and the collar extending beyond a cross section of the main container body.

Jennings teaches a similar fluid holding container with a main body 1, a secondary body 7 and a collar 7f in which the container is taught as being either formed from separate pieces (see figures 1-14) or formed in one piece (see figure 15) and the collar extends beyond a cross section of the main container body (see figures 1-15). It would have been obvious to one of ordinary skill in the art to form the container of Paley in one piece and with an extended collar in the manner as taught by Jennings since

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both inventions are directed at providing a means for dispensing measured liquids. It has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

(10) Response to Argument

Before addressing applicants arguments, the examiner would like to point out the following:

Applicants invention is directed to the field of blow molded thermoplastic (in particular glass) hollow products which have certain complex shapes which are formed by a particular process as set forth in the specification. In order to determine what one of ordinary skill in the art would consider obvious, we must establish that the person of ordinary skill is one which manufactures any and all hollow thermoplastic products. Thus the field of endeavor would cover all hollow thermoplastic products formed with complex shapes. The examiner therefore looked to all hollow thermoplastic products to determine if the limitations of the product claimed by applicant are known in one particular product or rendered obvious by a combination of two hollow products.

It is further noted that applicant has not provided any explanation in the specification as to why the hollow product is formed with the particular complex shapes as described, shown and claimed. Applicant merely states that by using the disclosed process, a hollow thermoplastic product of the shape and dimensions as disclosed can be formed.

Applicant has argued that the examiner has failed to establish a prima facie case of obviousness since the base reference of Paley teaches away from the proposed combination and Jennings is in a field of endeavor different from that of Paley. In regards to the reference of Paley, it is agreed that Paley in his preferred embodiment states that the inclined neck 17a is disposed wholly within the circular outline of the body. This is done such that the bottle can be readily fitted into the seat or container on the centrifuge machine. It is noted that nowhere in US Patent 1,971,164 has Paley limited his invention to a bottle that is solely to be used for centrifuge purposes and nowhere has Paley stated that the neck cannot be located outside of the circular outline of the body.

The secondary reference of Jennings was relied upon for a teaching that forming hollow thermoplastic products with a neck extending outside the circular outline of the main body is old and well known in the art.

One of ordinary skill in the art the needed the benefits of the Paley bottle without the need for it to be seated in a centrifuge and also desired a longer neck would know by the prior art that it would be obvious to extend the neck.

As to applicants arguments directed to the specific size and shape parameters as set forth in claims 24, 27 and 30-33, these limitations are clearly met by the structural characteristics shown in figure 3 of Paley.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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